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## STOCK DIVIDENDS AS GOING TO REMAINDERMAN OR LIFE TENANT.

Vermont Supreme Court discourses very instructively about the differing rules in American decision in regard to the question of what becomes of a stock dividend, that is to say, whether it constitutes income of a trust fund or is added to the corpus. In re Heaton's Estate, 96 Atl. 21.

It is pointed out that "the early English rule adopted in 1799 gave all extraordinary or unusual dividends declared during the life estate, whether in stock or cash, to the corpus and not to the income;" but the modern English rule is like the Massachusetts rule which "regards all cash dividends, however large, as income, and stock dividends, however small, as capital." In either way of looking at the matter, the interest life tenants or remaindermen may have in a trust fund would not seem to depend so much on the intent of a trustor as upon the discretion of directors of a corporation. The Vermont court seems to think that intention in the creation of the trust fund ought to control, but it finds nothing in the instrument before it for construction to guide it as to intention.

There is shown to be three ways among American courts of looking at this matter; one the Massachusetts way, which has prevailed for a number of years; another disregards the manner in which the dividend is declared and makes it apportionable to capital and income accordingly as it has accumulated before and since stock has been made a part of a trust estate, and the third rule regards all dividends, whether in stock or cash, as belonging to the life tenant.

Each of these three rules is followed by a number of the states. As supporting the the first rule there are Massachusetts, Connecticut, Rhode Island, Illinois, and apparently Ohio. A great many states follow the second rule, either with or without the apportionment feature. One of the states, New York, formerly applied the apportionment principle, but later receded from that and followed the ruling in Kentucky, in whose court the third rule was evolved.

In discussing these rules the Vermont court criticises courts adhering to the first. It admits it "is calculated to relieve the courts, as well as trustees, of much trouble," but says "it does not commend itself for its justice and equity." If this be true, it is a strong indictment of courts, the very reason of whose existence is to do justice, and so far as trustees are concerned, they are in office to execute trusts as they are intended to be executed or they should give way to those willing to take the trouble to do this. Courts and trustees are merely instruments of justice and equity.

To us the second rule seems the only fair one to apply. It puts trouble on no one but a corporation that has accumulated a surplus, which is to be apportioned. Even then the life tenant is more than apt to have injustice done him than remainderman, the corporation in discretion not distributing the entire surplus to stock or cash dividends.

But the third rule has injustice in it, working to the opposite extreme of the first rule. It takes something, or may so do, from corpus that has become a part thereof, where we admit that, if a corporation fails to declare any dividend at all, surplus earnings are part of the capital. If there is apportionment of this surplus according to the second plan, no one gets what he is not entitled to, and the only way a life tenant may be injured is reservation of an unnecessary fund for fair operation of a corporation. This chance all stockholders take as to the interests they hold in stock.

When you make an arbitrary rule, either according to the first or third plan, the personal interests of stockholders enter in

to bias their judgments. This is not entirely obviated by the second plan, but it is greatly lessened, and after all it may not be said that personal interests of stockholders or directors should be entirely eliminated. The theory of corporate management and the election of directors is that managers to qualify should have a pecuniary interest in the success of a corporation. This is an additional security for the faithful performance of their duties.

In one or two states the rule as to extraordinary dividends is provided for by statute, and, considering that this is a subject not greatly aided by precedents of the common law, because corporations did not then enter so greatly into our life as now, this kind of statute ought to be adopted in other states. It seems to us that the diversity we have mentioned should be taken up by the Commissioners on Uniform Laws and corrected.

## NOTES OF IMPORTANT DECISIONS.

INDEMNITY—ACTION BY EMPLOYE AND CROSS-ACTION BY EMPLOYER AGAINST LIABILITY COMPANY.—In Southwestern Surety Ins. Co. v. Thompson, 180 S. W. 947, in Texas Court of Civil Appeals, a suit for personal injuries was begun by a servant against a master, and an employers' liability insurance company was joined as defendant. No question appears to have been raised as to the propriety of such joinder and it may be that some statute in Texas specifically authorizes such joinder or unbroken Texas decision has upheld it. In either case it is something well deserving of notice.

In this suit the master filed a cross-action to recover his expenses in employing an attorney to defend his interests, the liability company having taken the position that it was not liable under its policy for the injury suffered. There was judgment in favor of the servant and against the master for $7,500 and against the company for $5,500, its policy being for $5,000 and $500 presumably for expense incurred by the master. As this $5,500 was to be deducted from the $7,500, this really gives the master the benefit of this $500 expense. This judgment was affirmed except that it was reformed so as to make the recovery against the insurance company for $5,000 on the ground, that the judgment, so far as the $500 was concerned, should be conditional.

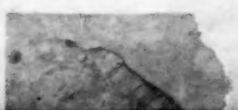
It was said: "We can see no legal objection to a maintenance of the suit for attorney fees, blended with the issues as indicated for a conditional recovery in favor of" the master.

The only point the insurance company made was, not that it was joined as defendant, but that its obligation to the master had not matured, and that issues between the company and insured were confused with issues in the main suit. The point about maturity seems to be admitted, and one of the strange things about the case seems to be that the court decides a case so far as is the contention between the company and insured before it legally could have arisen. It well may be thought also that the plaintiff was given an open road in his contention, where the two defendants were fighting each other.

APPEAL AND ERROR—SUGGESTION BY A COURT AS TO PREPARATION OF STATEMENT OF EVIDENCE AND ITS SETTLEMENT.—An easy and effective method of condensing the evidence in these days of stenographic reports of trials, and thereby not only lessening the expense of appeals, but contributing to clarity in disposition of the only questions in dispute, is pointed out by a judge of the Supreme Court of the District of Columbia. Maass v. Wardman, 44 Washington L. R. 72.

In this case there was a motion by appellee to strike from the records appellant's statement of evidence, as being incomplete and so improperly prepared as to make it impossible for appellee to propose amendments, and to substitute an alleged proper statement prepared by appellee.

The rule of the Court of Appeals of the District is quoted as being sufficient to cover such a case and the motion was disallowed. The trial court then makes the following suggestion: "If a statement of the evidence is prepared with the lines on each page so numbered that each copy shall correspond, and if the party proposing amendments refers at the end of each amendment to the proper page of the stenographer's minutes, where there are such and if the appellant marks upon the several amendments his allowance or disallowance thereof before the proposed amendment is submitted to the court for settlement, the labors of the court, especially in a long case, will be much lightened."



We have been told that in the days prior to the taking down of testimony in shorthand, it was a labor of some difficulty and much tediousness to prepare an acceptable brief of the evidence. Since the stenographer has come in it is an easy matter, if the entire evidence submitted at a trial is to be embraced in a bill of exceptions. But in a brief statement to contain all the evidence necessary for the consideration of the material questions involved the fairest way to do this is by elimination of unnecessary evidence as taken down by the stenographer. To bring about this cutting-out, appellee should have the right to move therefor. His right would rest upon the principle of cutting down costs and presenting the questions at issue in an independent way. The surplusage in bills of exception increases, also, very greatly the labors of appellate courts, and they ought to be much attracted by a clean presentation of the issues really involved.

It would not be out of the way for court rules to be a little less general and more specific along the lines suggested by the District of Columbia court. In the meantime, attorneys may find an opening therein for advantage in preparation of records for an appellate tribunal.

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NEGLIGENCE—CAUSAL CONNECTION IN CONJECTURE OF DEATH.—The wide reach of a jury question is illustrated in a case decided by Supreme Court of Michigan. Kruis v. Grand Rapids, etc. Ry. Co., 155 N. W. 742.

The facts show that a telephone company left a wire dangling in a highway running parallel to an electric railway with a bare third rail. This wire could be thrown against this rail by the wind, or children might be attracted so as to throw it against the rail so as to see the sparks fly. Children went to school along this way, and during the two months the wire hung, they had been seen playing with the wire. On a day when the ground was wet and a wire fence ran near, a deceased, whose administrator was suing, was found dead apparently from shock, the body lying against the fence. There was recovery upon the theory that either the wind, high at the time, or the children, threw the wire against the third rail and the wet ground carried the current to the fence. The fence was electrified and deceased was killed. The court thought "the trial judge committed no error in submitting the question of proximate cause to the jury under the circumstances of this case."

It was shown that the telephone company had been thrice notified of the position of this wire, but apparently paid no attention to the notice.

Here it does not appear at all that the hanging wire was caused to touch the third rail and the inference is that, if it did, it was not caused to do so by the acts of children as the death would have been discovered by them. It is left, therefore, to attribute the death to the wind and the ground being wet.

Considering that the rule of law is that plaintiff has the burden of showing by a fair preponderance of proof that defendant's negligence causes a particular injury or death, it seems to us that the jury's verdict against the telephone company was under a license to them to indulge in the very widest range of speculation. If it does not represent guess work, pure and simple, with some of the jury going upon one theory and some upon another, it is difficult for us to imagine a case that does.

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FOREIGN CORPORATIONS — CONDITIONING JURISDICTION IN SUITS ARISING ELSEWHERE.—New York Supreme Court in Appellate Term, applies ruling by Federal Supreme Court that a state cannot impose on a foreign corporation, as a condition of its doing business therein, that it shall be served with process in an action, the cause of which arises elsewhere. Bagdon v. Phila. and Reading Coal and Iron Co., 156 N. Y., Sup. 647.

It does not appear in the New York case whether it involved or not a cause of action based on tort or arising out of contract. Whether one or the other, however, would seem to make no difference, as Simon v. Southern Ry., 236 U. S. 115, 130, puts claims on contracts and suits for torts on the same footing in this regard, when it was ruled that: "The statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other states."

The Supreme Court argues as to "the manifest inconvenience and hardship arising from such extraterritorial extension of jurisdiction," but this is not greater than any citizen may be subjected to by being temporarily in another state. Comity is all sufficient in such a case and inconvenience is not taken into account. But why speculate about this extension of the principle that a state cannot forbid a foreign corporation from resorting to a federal court as to actions begun by or against it, notwithstanding that a state, as generally ruled, may impose upon a foreign corporation any condition it sees fit to its doing business in its borders? Our ultimate court has so held and that is an end of the matter.

## THE ADMISSIBILITY AND WEIGHT OF HEARSAY EVIDENCE IN QUASI-JUDICAL HEARINGS.

*The Spirit of Legislation Providing for Administrative Boards Whose Awards Affect Private Right.*—The most important of the tribunals, whose decisions relate directly to private or individual right, is the Interstate Commerce Commission. It might, however, be claimed as to that, that the right affected is not a common law right but one regulatory, in that it has its origin in the Commerce Clause of a Constitution, which regards all claim of right thereunder as grantable or not as the functions of our Federal Government may be injured or promoted.

Nevertheless it is the policy of such government to prefer the application of principles of inherent justice where an act is not expressly or by strong implication *malum prohibitum.*

It has been said that: "The findings of the Commission are made by law *prima facie* true. This court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience."[1] Repeating this language, a later case[2] adds that: "Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final. * * * The courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

In this statement it is implied that the members of the Commission shall arrive at their findings, not entirely as a court, referee, arbitrator or jury should, but because they are "informed by experience." This must mean other experience than that which is the support of what is known as judicial notice. This is not founded on special, but on general, knowledge—that which is common to mankind generally.

At the same time there must appear "substantial evidence to sustain" any order of the commission in its judgment in a particular controversy. This does not, necessarily, mean such evidence as a judicial tribunal would recognize.

Courts often have held, that testimony which is opposed to physical facts, that is to say, to common knowledge, may be disregarded by courts, and no doubt, if a tribunal like the interstate commerce commission were to make a finding in accordance with such testimony only, it would be held not to be based on "substantial evidence." But would it be held, that a finding by such commission against testimony upon the ground, that it was opposed to special knowledge of members of the commission, all set out in the finding, was sustained by "substantial evidence?" If not, what figure does the Commission being "informed by experience" cut in the findings it makes?

Would this be construed to relax the rule as to inadmissibility of strictly hearsay evidence or introduce another or other exceptions to such rule? This question leads naturally to the reason of the rule of exclusion.

*Reason for the Exclusion of Hearsay Evidence.*—We know that what we call the Hearsay Rule is unknown to the Civil law, and its harshness has been inveighed against by text-book writers in cases where death, for example, operated to defeat actions or defenses. One author has spoken of the rule as "the distinctive anomaly of the English law of evidence."[3] The rule, however, in its integrity has been enforced in American courts very greatly upon the grounds laid down by Greenleaf many years ago. He said: "Hearsay evidence is uniformly held incompetent to establish any *specific fact,* which, in its nature, is susceptible of being proved by witnesses, who can speak of their own knowledge. That this species of testimony supposes something better, which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its

(1) Illinois C. R. R. v. I. C. C., 206 U. S. 441.
(2) I. C. C. v. R. R., 222 U. S. 541.

(3) 4 Chamberlayne Mod. Ev. §§ 2574, 2700, 2720.

incompetency to satisfy the mind as to the existence of the fact and the frauds which may be practiced under its cover, combine to support the rule, that hearsay evidence is totally inadmissible."[4]

Notwithstanding such weakness and incompetency, yet we know that when we get away from effort "to establish a specific fact," hearsay evidence may be offered to prove collateral facts which may support or oppose evidence in regard to the specific fact—in other words, under cover of exceptions to the rule it is admissible.

*The Rule as a Protection to Juries.*—This weakness and incompetency further secures enforcement of the rule in the fact "that there is danger lest the jury be misled by it, according to it more weight than it is rationally entitled to receive."[5] This, however, seems like an attempt to bolster up a rule not founded in principle, and measurably, at least, it would apply to many of the exceptions to the rule itself. Nevertheless, some English authority distinguishes so far as courts of equity and courts of common law are concerned. Along this line spoke Lord Mansfield in 1811:[5a] "In Scotland and most of the Continental states the judges determine upon the facts in dispute as well as upon the law; and they think there is no danger in their listening to evidence of hearsay, because when they come to consider of their judgment upon the merits of the case, they can trust themselves entirely to disregard the hearsay evidence, *or to give it any little weight which it may seem to deserve.*[6] But in England where the jury are the sole judges of the fact, hearsay evidence is properly excluded, because no man can tell what effect it might have upon their minds." There is appended a footnote by the editor of this report, which reads: "It is observable that, according to the practice of the English courts, in affidavits which are submitted to the judges only, hearsay evidence is often admitted and acted upon."

And it was said by Bosanquet, J., in the Berkley case, that: "Where the judges are authorized to deal both with the facts and the law, a much larger discretion with respect to the reception of evidence may not unreasonably be allowed than in courts of common law, where the evidence, if received by the judge, must necessarily be submitted entire to the jury. By the rules of evidence established in courts of law, circumstances of great moral weight are often excluded, from which much assistance might in particular cases be afforded in coming to a just conclusion, but which are nevertheless withheld from the consideration of the jury upon general principles, lest they should produce an undue influence upon the minds of persons unaccustomed to consider the limitations and restrictions which legal views upon the subject would impose."

*Application of the Rule to Statements of Deceased Persons.*—As late as 1876 it was much debated in England whether statements of deceased persons purely hearsay in their character were admissible and there was great consideration of the question in English Court of Appeals, all agreeing that they should be excluded.[7] Mellish, L. J., concurring, said: "If I was asked what I think would be desirable should be evidence, I have not the least doubt in saying that I think it would be a highly desirable improvement in the law if the rule was made that all statements made by persons who are dead respecting matters of which they had personal knowledge, and made *ante litem motam*, should always be admissible. There is no doubt that by rejecting such evidence, we do reject a most valuable source of evidence."

In Massachusetts there is a statute providing that ground may be laid for the admission of declarations of a deceased by proving to the satisfaction of the judge that

(4) Greenl. Evidence (Lewis Ed.) § 99.
(5) 4 Chamberlayne Mod. Ev., §§ 2575, 2719.
(5a) Berkeley's Case, 4 Camp. 401, 414.
(6) Italics supplied.
(7) Sugden v. St. Leonards, 45 L. J. P. 49, 34 L. T. Rep. (N. S.) 372.

they were made in good faith before the beginning of suit and upon personal knowledge of the declarant.[8]

In Connecticut, a statute provides that in action by or against representatives of deceased persons, declarations of the deceased relevant to the matter in issue may be received.[9]

These statutes, and very possibly more might be found, represent the view expressed by Mellish, L. J., *supra*, and show an approval of the admission of hearsay evidence, where foundation preliminary to its introduction is laid.

*Summary of Above Holdings.*—It seems that the hearsay rule is merely an English rule and even there it was only enforced in its rigidity in the courts of common law and not in courts where judges, and not the jury, were to consider it. This judgment by judges took into account its probative force, but the policy that excluded it considered that it was inherently so dangerous for the untrained minds of jurors, that the rule should be broad enough to cover all possible injury. It was deemed likely, that the care of judges was incapable of preventing injury more often resulting, than would result, if the exclusion were universal. A rule of this kind under the English system, *a fortiori* would apply to American courts, because our judges are more greatly mere moderators in a trial than its directors. But, at bottom, all that is said about the inherent weakness of hearsay evidence and of opportunity being denied of cross-examination does not necessarily include incompetency. This refers to weight and not admissibility. For example, it was laid down in one of our courts, in speaking of exceptions to the rule of exclusion of hearsay evidence, that it comes in "when no better evidence can be supposed to exist." But this exception was said not to cover the admission of hearsay upon hearsay.[10]

Taking it, then, that the ultimate and really controlling reason for the rule of exclusion is the greater evil, that would be wrought in jury trials, than were it to be admitted, the question comes up, what should be the rule in tribunals where no jury trials are to be had? I have been able only to submit suggestive authority in findings by the interstate commerce commission, but there are cases of more direct bearing under Workmen's Compensation Acts, where awards are made by commissions.

*English Compensation Cases Excluding Hearsay.*—It must be admitted, that in England the hearsay rule is enforced in compensation cases very strictly,[11] but I greatly doubt whether adoption by American states of similar statutes to the English act should be considered to bring over here the rule of construction there announced. This ordinarily applies where one state takes from another state a statute with prior construction thereon. In this case the statute imported is merely taken as fairly representative only of a policy in the awarding of compensation for injuries and it has no bearing on the way our courts should enforce that policy. We should not consider ourselves hampered by the English system regarding rules of evidence, where it disagrees with our system. But, if words of the English act as to their meaning have been construed as to substantive law, our act employing those words ought to be held to mean as those words had been construed.

As an illustration of how one American court[12] regarded the English acts, which as construed held to presumptive prejudice arising out of incompetent testimony before a board, the court said: "We do not think, however, that under the language used in

(8) Mass. Stats. 1898, c. 535; Rev. Laws, Ch. 175, § 66

(9) Foote v. Brown, 81 Conn. 218, 70 Atl. 699; Mulcahy v. Mulcahy, 84 Conn. 651, 81 Atl. 242.

(10) Gould v. Smith, 35 Me. 513.

(11) Gilhey v. Ry. Co., 3 B. W. C. C. 135; Smith v. Hartman & Holden, Ltd., 6 B. W. C. C. 719.

(12) Peck v. Whittlesberger, 181 Mich. 463, 148 N. W. 247.

our workmen's compensation act the decisions of its administrative board must be in all cases reversed under the rule of presumptive prejudice, because of error in the admission of incompetent testimony, when, in the absence of fraud, there appears in the record a legal basis for its findings, which are made 'conclusive' when said board acts within the scope of its authority." The Michigan court was not called upon to hold in precise support of the proposition I have advanced, but it approaches such a holding very closely.

*Michigan Compensation Act.*—The compensation act of the State of Michigan[13] provides that: "The findings of fact made by said industrial accident board acting within its powers shall, in the absence of fraud, be conclusive, but the Supreme Court shall have power to review questions of law involved in any final decision or determination of said 'industrial accident board.'" The act also provides that awards are to be made by committees on arbitration and approved by the industrial accident board.

In Peck v. Whittlesberger, *supra*, there was claim for compensation for the death of a workman. It was shown that deceased left his work at the regular quitting time. His daughter testified that he arrived home a little later than usual and showed her an injury to his hand near the thumb. He told her he chopped up a box and ran a nail into his thumb. He worked the next day until 4 p. m. The other men at work saw and heard nothing of the accident nor observed anything unusual in his work or conduct. He did not return to work afterwards. A doctor was called in five days afterwards and he proved the death from injury in the hand. This was all of the evidence. Upon *certiorari* to the board its award for compensation was sustained. It was claimed there was no competent evidence to show where or how the injury occurred or that it was in the course of employment.

(13) 2 How. Stat. (2d Ed.) § 8339 et seq.

The court, after saying that the rule against hearsay evidence is more than an artificial technicality of law, goes on to give instances of hearsay upon hearsay and holds that this is what was really meant, but the daughter's evidence was not deemed this kind of hearsay.

The court said: "We do not conceive that in reviewing decisions of this board all technical rules of law, often made imperative by precedent in reviewing the action of regularly constituted trial courts, should be applied. The board is purely a creature of statute, endowed with varied and mixed functions. Primarily it is an administrative body, created by the act to carry its provisions into effect. Supplemental to this, in order that it may more efficiently administer the law, it is vested with quasi-judicial powers, plenary within the limits fixed by the statute. * * * Its findings of facts upon bearings are conclusive, and cannot be reviewed, except for fraud, provided necessarily, that any competent legal evidence is produced from which such facts may be found." Nowhere in the opinion is it claimed that anyone knew how the accident occurred except as decedent told him. It is stated that report was made of the accident by the employer and it is said that: "Such reports from the employer where all sources of information are at his command when the reports are made and he has had ample opportunity to satisfy himself of the facts, can properly be taken as an admission, and, at least, as *prima facie* evidence that such accident and injury occurred as reported." It seems to have been on this report made by the employer which was not impeached, that this case was decided.

Nevertheless, the decision shows, that these tribunals should not be treated, in their decisions as regularly constituted courts of law in trials are treated. Technical rules of law as to the admission of evidence will not be applied.

*Massachusetts Compensation Law.*—In Massachusetts it was contended that a stat-

ute providing for the admissibility of declarations of a deceased person was not applicable to any tribunal but a court and, therefore, such hearsay evidence was not competent evidence to sustain a claim under the compensation law of that state.[14] The court overruled this contention, holding that the Industrial Accident Board came under the word "court" in its broader significance.

Here it is not apparent that the question I am here considering was necessary to be passed upon. The ruling in this case only shows, that all that might be claimed for a court in applying the rules of evidence could be claimed in a case under the compensation act. Whether or not more could be claimed, so far as technical rules are a hindrance, was not decided.

*California Compensation Act.*—In three states, California, New York and Michigan, the feature of which I am here speaking, came before the courts in a very direct way. In Peck v. Whittlesberger, *supra*, the court uses language which shows that it does not recognize any intent by the legislature that findings of the commission should depend upon evidence of a strictly technical character, but the ruling was, in effect, that the employer was by making report which in itself depended on hearsay evidence, estopped to urge any error in the commission relying on like evidence. I think, that the federal Supreme Court intimates, as I have shown by authority, that findings by interstate commerce commissions need not depend on evidence such as would be required by a judicial tribunal.

In the California and New York cases, however, the question of the admissibility *vel non* of hearsay evidence is squarely presented and decided.

In a California case[15] the statute is shown to provide that hearings before the commission "shall be governed by this act and by the rules of practice and procedure adopted by the commission and in the conduct thereof neither the commission nor any member thereof nor any referee appointed thereby shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award or regulation made, approved or confirmed by the commission."

The court does not speak of this sort of tribunal as the Michigan court does, calling it "an administrative body created by the act to carry its provisions into effect," and of there being no duty on courts in reviewing its decisions to apply technical rules of law, and yet the Michigan act was not nearly so specific in saying that the commission in that state should not "be bound by technical rules of evidence." The California court plants itself squarely on the proposition that the hearsay rule is not a technical rule.

If a merely administrative body, supposed to have or to acquire special knowledge for the performance of its duties, is to be hampered in its most important function by a rule, which is merely to protect untrained jurors against undue influence, and which rule does not control judges hearing evidence, why is it not to be deemed a technical rule? In all of the cases the California case cites, the courts were speaking of common law courts, where the issue was one for a jury to decide, and the English compensation statute, as to which cases also are cited, is not shown to carry any such provision as is found in the California statute. If the less explicit Michigan statute is held to take cases thereunder from the English rule, *a fortiori* is this to be said as to the California statute.

*New York Compensation Act.*—In the New York Compensation Act it is provided that: *"Technical Rules of Evidence or Procedure Not Required.* The commission or a commissioner or a deputy commissioner in making an investigation, or inquiry or conducting a hearing shall not be bound by

(14) Pigeon's Case, 216 Mass. 51, 102 N. E. 932, Ann. Cas. 1915, A. 737.

(15) Engelbretson v. Industrial Accident Com., 151 Pac. 421.

common law or statutory rules of evidence or by technical or formal rules of procedure * * * but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties." By a majority view, New York Supreme Court, in Appellate Division, it was ruled that an award predicated on evidence "wholly hearsay" should be sustained.[16]

The majority in its opinion cites another section authorizing the commission to adopt rules providing for the "nature" of the evidence to be accepted by it. The court said: "As to proceedings before the commission, these two sections wholly abrogate the common law, the statute law, the rules of procedure formulated by the courts and all the technicalities respected by the legal profession. The commission is authorized by this section, it seems, to make its investigation in any manner that it chooses, wholly unfettered by any law previously invented by man. This is the spirit of the statute. The very instant that the old rules of evidence are invoked, the informal character of the hearing disappears, and the rigid formal rules of procedure and all the technicalities incident to the practice of the law will grow up around the commission, hampering and delaying it, working inconvenience and hardship upon the claimants and defeating the intent of the law."

There is a dissenting opinion, but it does not go to the length of saying that hearsay evidence was not admissible in such a hearing as was had. This opinion said: "The commission had the right and power, in its untrammeled discretion, to receive and admit proffered proof freely and liberally, with a view to developing all the facts. It might take any evidence, oral or documentary, which impressed its members as perhaps tending to disclose to them the whole situation as to matters in dispute." As to what shall be done with this evidence, it is further said: "After the commission has gathered all this data, all this information, unfettered by technical rules of evidence, there must come sifting and sorting and there must come assortment of wheat from chaff, demonstration from gossip, proof from "hearsay," and then the ascertainment of what facts have been fairly proved under 'the maxims which the sagacity and experience of ages have established as the best means of discriminating truth from error.'" But "there must be in the record some evidence of a sound, competent and recognizedly probative character to sustain the findings and award made."

The majority view was that if hearsay evidence could be received at all, it could be acted upon for whatever it was worth, in the judgment of the commission. This view, I think, is right, because there seems no instance where it has been received that it has been refused to have its influence on the ultimate question of fact to be determined. It has been denied admission in jury trials, because generally juries do not know how to weigh it, and it has been received by judges and acted on. And where such evidence came under some exception, there was the same inherent weakness as where it was offered to prove a specific fact. But the members of an industrial commission not only possess the same judicial cognizance as judges have, but in addition they are presumed to be in possession of a special cognizance too.

I regret that I am unable to cite more authority to the specific question I have been treating, but it does seem that statutes creating special commissions ought to be treated more liberally by the courts, than the California court evinces. If England, which gave us the hearsay rule, which, instead of representing as much as its admirers claim for it, really is opposed to as equally a great system of jurisprudence as the civil law, admits that it often rejects "a most valuable source of evidence," why should we be clinging to it, when men in their everyday relations in life would not reject

(16) Carroll v. Knickerbocker Ice Co., 155 N. Y. Supp. 1.

it—especially when we are acting in a tribunal of purely administrative character?

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## LIBEL AND SLANDER—CANDIDATE FOR OFFICE.

PUTNAM v. BROWNE et al.

(Supreme Court of Wisconsin. Jan 14, 1916.)

155 N. W. 910.

By becoming a candidate for judge, plaintiff placed his character as to integrity, incorruptibility, and judicial ability before the people for consideration, so that an individual or a newspaper might in good faith and without malice criticise him in those respects even severely and caustically, but insult or contempt or false and libelous statements of fact were not so privileged.

WINSLOW, C. J. [1] A number of errors in the charge of the court are alleged, but it seems to us that we can attain greater clarity by treating the case abstractly and stating the general principles applicable, than by taking up the alleged errors in detail.

The occasion was one of conditional privilege. The plaintiff was a candidate for the office of county judge, a position where integrity, incorruptibility, and judicial ability are absolute essentials. By his candidacy he placed his character in these respects before the people for consideration and discussion. One voter might in good faith and without malice place before other voters fair criticism of or comment upon the plaintiff's acts in these respects without liability, but he could not make libelous statements of fact which were false any more than he could if no such candidacy existed, nor could he indulge in insult or contemptuous phrase. A local newspaper might do the same things and no more. But while the privilege is thus confined to fair comment or criticism upon facts the comment may doubtless be caustic and severe if the facts warrant it. Such has been the position of this court in the case of criticism of public officers. Buckstaff v. Viall, 84 Wis. 129, 54 N. W. 111; Williams v. Hicks Co., 159 Wis. 90, 150 N. W. 183; Leuch v. Berger et al., 155 N. W. 148 (present term). The same rule has also been applied to publications concerning candidates. Ingalls v. Morrissey, 154 Wis. 632, 143 N. W. 681, Ann. Cas. 1915D, 899.

[2] It is recognized that there is a disagreement in the authorities on the question whether false statements concerning candidates for office made without malice and in good faith are privileged. In some jurisdictions it is held that all matters true or false having a bearing on the fitness of a candidate may be published without liability if it be shown that they were published without malice in good faith, and in the honest belief that the facts stated were true. Briggs v. Garrett, 111 Pa. 404, 2 Atl. 513, 56 Am. Rep. 274; Coleman v. MacLennan, 78 Kan. 711, 98 Pac. 281, 20 L. R. A. (N. S.) 361, 130 Am. St. Rep. 390. We deem the other view, however, to be supported not only by our own decisions, but by the better reason and by the great weight of authority in other courts. Newell, Slander and Libel (3d Ed.) §§ 633—636; 25 Cyc. 402—405, and notes; Post Pub. Co. v. Hallam, 59 Fed. 530, 8 C. C. A. 201.

[3] We do not overlook sections 94—17 and 94—38 of chapter 650, Laws of 1911 (now section 12.17, Statutes 1915), which provide that no person shall knowingly publish any false statement in relation to a candidate intended or tending to affect the voting at any primary or election, and also provide for the punishment of such an act criminally by fine or imprisonment or both. We do not, however, see in these provisions any purpose to change the established principles of law which respect to privilege in a civil action. One of these principles, as we have seen, is that the conditional privilege as regards a public officer or candidate for public office does not extend to false statements of fact. The statutory provisions cited seem intended to add to, rather than to subtract from, the penalties which may follow the publication of false and libelous statements of fact regarding candidates for public office.

[4] It is true that in certain classes of cases the law of conditional privilege will protect one who makes an entirely false charge, as, for instance, one who communicates to an officer of the law a charge of crime against another, in good faith, believing it to be true, and acting simply from a sense of public duty. Joseph v. Baars, 142 Wis. 390, 125 N. W. 913, 135 Am. St. Rep. 1076. The reason for this is very plain, and it is equally apparent that it is not present in such cases as the one before us

[5-7] Now in the present case the first question for the jury was what meaning the article carried to the readers of the paper. In view of the political conditions in the state in 1910 and at the time of the publication as shown by the evidence, did this article convey

the idea to the readers of the paper (1) that the plaintiff received and took part in the unlawful distribution of a part of a political corruption fund in the primary campaign of 1910, or (2) that he sold his political influence and surrendered his honest belief for money in that campaign? If it carried these ideas or either of them, it was libelous unless proven to be true. If, however, it simply conveyed the idea that the plaintiff received and distributed in lawful ways a part of a large political campaign fund and that he received money for political labor and influence exerted in lawful ways and not contrary to his honest convictions, the article was not libelous in these two respects. In judging of the meaning of any given part of the article, the whole article is, of course, to be considered.

[8] The propositions just referred to are really the only statements of fact in the article, but there is a comment upon them which stands upon an entirely different basis, and that is the thinly veiled comparison of the plaintiff to Judas Iscariot. This is not a statement of fact but a comment or criticism. It likens the plaintiff, not to an ordinary turncoat, but to the man who, in the estimation of the Christian world, committed the greatest crime in history by selling the life of his divine Master for money.

It requires no argument to prove that this is a jibe, a contemptuous insult, and not fair criticism of any type; hence it is not privileged. Curtis v. Mussey, 6 Gray (Mass.) 261. Being libelous on its face, the only question to be submitted to the jury in connection with it is the question of the amount of damages. Thus the defense of conditional privilege drops entirely out of the case.

[9] Returning now to the consideration of the questions arising with regard to the statements of fact first herein discussed, if the jury find those statements not to carry a libelous meaning they also drop out of the case; but, in case the jury find that they carry the libelous meaning above referred to, the question will then arise: Are they, or is either of them, substantially true? This question, however, will only arise in case justification is properly pleaded, which it seems is not the case at present.

[10] It is doubtless true that, in order to be a complete defense, a justification must be as broad as the libel, and that an allegation of the truth of a part of the facts alleged in the libel can operate only as a partial defense. In the present case the defendants are compelled to admit that the plaintiff did not in fact receive $200 for organizing Manitowoc county, and hence that he did not receive or disburse $387.67 as charged, but $185.67 at the most. Thus it is evident that they cannot plead that the entire sum named in the article was received and disbursed but only a part thereof. Ordinarily this would only be a plea in mitigation of damages, but in a case like the present it would be a plea of justification. The rule is that the substance of the charge only need be proven true. Nehrling v. Herold Co., 112 Wis. 538—567, 88 N. W. 614; Conner v. Standard Pub. Co., 183 Mass. 474, 67 N. E. 596. The material substance of the statement in question (if it be held by the jury to convey a libelous meaning) is that money was received and disbursed by the plaintiff for corrupt and unlawful political purposes, not that precisely $385.67 was so received and disbursed. The quality of the act does not depend upon the amount so long as the amount is substantial and not trivial. It is really immaterial whether it was $50 or $385.67. So if it be shown by the defendants that a substantial sum was so received and disbursed, though that sum be much less than $385.67, they will have shown a justification as to the supposed libelous statement under consideration. There was testimony in the case tending to support the defendants' contention in this regard; but, inasmuch as there must be a new trial of the case, we forbear to comment upon it.

[11] While there was no law in 1909 limiting the amount which would be legally spent by candidates for public office (the first law on that subject being chapter 650, Laws of 1911; Stats. 1913, §§ 94—1 to 94—38), there were many ways in which money could be corruptly and unlawfully used. While men might doubtless be hired to do lawful political labor, it was unlawful to buy votes, either directly or indirectly under pretense of paying for work or by the use of other subterfuges; it was, with certain exceptions, unlawful for any person to pay or agree to pay money to secure the nomination of a state senator or assemblyman unless the person making the promise or payment was a bona fide resident of the district; and it was necessarily unlawful to use such moneys for such purposes if collected. R. S. 1898, § 4543b. Whether there were other unlawful and corrupt uses to which money could be put in 1909 it is unnecessary now to consider. Similar considerations apply to the supposed charge that the plaintiff sold his political influence for money. The question of the amount of money is entirely immaterial if the fact itself be shown.

We do not deem it necessary to review the charge of the court at length. It contained

at least two vital errors which render a new trial necessary, viz.: (1) It did not inform the jury that the comparison to Judas was libelous as matter of law and not privileged; and (2) it told the jury in substance that if the statements were made in good faith and in honest belief in their truth they were privileged whether true or false.

Judgment reversed, and action remanded for a new trial.

SIEBECKER, J., took no part.

NOTE.—*The Bounds of Legitimate Criticism of a Public Officer or of a Candidate for Public Office.*—The instant case announces what seems to us a singular principle of law, viz.: that a criticism in which a comparison is used that amounts to a contemptuous insult, is libel, though the facts upon which the comparison is based may be true, and this it holds as matter of law. Here it is said there was a "thinly veiled comparison of the plaintiff to Judas Iscariot," and "it requires no argument to prove that this is a jibe, a contemptuous and not fair criticism of any type; hence it is not privileged."

There is cited for this principle, Curtis v. Mussey, 6 Gray (Mass.) 261, but I do not see that this case in anywise supports it. That case was a criticism of a decision by a commissioner of the Circuit Court of the United States. The court said: "There were passages in the publication which appeared on their face to be libelous, such as the charge of 'legal Jesuitism,' the comparison to Pilate and Judas, the charges of prejudice and want of feeling and the assertion that the decision of plaintiff as commissioner was a partisan and ignoble act. The statements complained of were not privileged communications, and as discussions upon a matter of public interest did not appear to be justified, because they charged the plaintiff with corrupt and improper motives, and the answer did not aver their truth." But it is not said, that had the truth of the facts charged been pleaded, such strong language in the way of description of what they amounted to would have been held libelous.

In Hanow v. Jackson Patriot Co., 98 Mich. 506, 57 N. W. 734, plaintiff was referred to of being guilty of a "dirty Jew trick," and this was not even considered as among the statements that were libelous *per se*, but it might be considered as part of the entire publication read in evidence for the purpose of explaining the parts which were libelous *per se*. The petition had five counts, each of which was based on the use of this language.

In Hollenbeck v. Hall, 103 Iowa 214, 72 N. W. 518, 39 L. R. A. 734, 64 Am. St. Rep. 175, the alleged libel consisted in a written statement that a debtor "having no other defense, he cowardly shrinks behind that of statutory limitation. Such a course is not exactly in accordance with our idea of strict integrity." It was said in holding that it contained nothing libelous, that: "The characterization of the acts is based entirely on the assumption that the conduct of the plaintiff in availing himself of the defense was not honest and in accord with their standard of integrity. The spirit and purpose of the letter may well be said to indicate an element of character quite as inconsistent with the Golden Rule as that which permits omissions in the matter of pecuniary obligations." It was based on facts which either supported or negatived its conclusion, and it was no harm to state those facts.

In Zier v. Hofflin, 33 Minn. 66, 21 N. W. 862, 53 Am. Rep. 9, there was a false publication in the way of an advertisement in a newspaper by defendant that plaintiff was wanted to pay his room rent "and not go deadheading in this way." These words were held not defamatory on their face, but as they were intended and used, and, being false, they might become libelous. It is thus seen that to call one a deadhead added nothing to alleging dishonesty in the way of an epithet.

There is to be found a great abundance of authority as to what words are libelous *per se* and what are not, but very little as to the precise question here involved. Why, however, language which merely expresses an opinion as to what a stated course of conduct amounts to, in the opinion of the writer or publisher of a libel, should be considered any more than amplification of the statement on which it purports to be based I cannot see. If this amplification is the expression of a proper conclusion, how does it hurt, but, if it expresses an unwarranted conclusion, it carries its own antidote. If the statement of facts comes under a privilege of informing voters of the character of a candidate appealing for votes, it may be true that expletory language may show malice, but independently of this, they cannot be considered statements of fact. Otherwise it would be to draw a distinction not sound. If a statement showing criminal or corrupt conduct is set forth, denunciation of that is not denunciation of him who is guilty of the conduct, and to say of one so guilty that he does not deserve support or his conduct is infamous, nevertheless it is only a statement purely impersonal in character. It refers back, necessarily, to the statement of facts. It often has been ruled that just criticism should relate to acts and not to persons. But this does not mean, that in form it must so refer. If it in effect does it, this ought to be sufficient. C.

## ITEMS OF PROFESSIONAL INTEREST.

### RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

#### QUESTION No. 99.

**Annulment of marriage; Employment—Acceptance of joint retainer, or of contribution to fees, from persons having common interest in result—not disapproved.—X, a woman, marries A. She then marries B, who is ignorant of her previous marriage to A. She then secures a decree of divorce from A and marries C. B desires annulment because of X's incompetency to contract the marriage with him. C, in order to remove the marriage to B as an apparent obstacle to the legality of his own marriage relation, is willing to contribute to**

the expenses and counsel fees of B in procuring an annulment decree.

In the opinion of the Committee, would there be impropriety in a lawyer accepting a retainer from B to procure an annulment decree, with the knowledge that C is contributing to his compensation, or a joint retainer from B and C to procure such decree for B?

Answer No. 99.—In the opinion of the Committee, the lawyer in question might with entire propriety advise both B and C as to the legality of B's marriage with X and might with propriety accept a fee from each for such advice. There seems, therefore, to be no reason why, if he is retained by B to have that marriage annuled, he could not accept a retainer to which C contributes. It is to the interest of C, to whom X is now married, to have her prior marriage to B annuled; and on the facts stated a clear case for such annulment in favor of B seems to be made out—it being assumed that the marriage of X to A was valid and was in full force at the date of her marriage ceremony with B. The doubt in the mind of the inquirer arises, we assume, from an apprehension that some suspicion of collusion might attach to the suit, as C would be supposed to be acting in the interest of his wife, the defendant in the action. But such apprehension, we think, is groundless. X could, we think, maintain the action of annulment as well as B, and we do not see why the husband of X might not with propriety bear a part or even the whole of the expense of a suit, no matter by whom instituted, which will serve to remove an apparent impediment to his own marriage.

QUESTION No. 102.

Collections; relation to court; relation to client—Furnishing client with blank summonses subscribed by attorney, to facilitate collections—disapproved.—Since the adoption of the new Municipal Court Code (N. Y. Laws 1915, ch. 279, § 19), which authorizes the issuance of summonses by attorneys at law, it is stated that some attorneys have permitted their clients to print blank summonses in large numbers, subscribed with the attorney's name, and to furnish their collectors with a pad of such printed summonses, so that the collector may fill the blank and leave a copy of such summons with any customer who refuses payment.

In the opinion of the Committee, is such practice improper?

Answer No. 102.—In the opinion of the Committee, the practice is unprofessional and illegal. An attorney should not delegate any professional function or power to his client. (See Matter of Rothschild, 140 A. D. 583; 1st Dept., 1910.)

## HUMOR OF THE LAW.

Counsel—How do you know this night letter was forged by a man and not written by the woman whose name is signed to it?

Expert—Because it contains just forty-eight words, and a woman would have used two more to get her money's worth.—American Legal News.

There was no doubt about it, Michael Muldoon had lost his £5 note. How, then, was he to get back to Dublin?

But, sure, the London police would find it for him? Into a station marched Michael and told his sad story to the sergeant.

The officer was inclined to be sympathetic.

"I suppose you wrote down the number of the note?"

"And Oi did that, sorr!" said Mike, proudly.

"And what is the number, then?"

And isn't that just what I don't know myself?"

"But you said you wrote it down!" exclaimed the officer, testily.

"That's the worst of it. I wrote it on the back of the note!"—Answers.

Mike Mulcahy had been arrested after a friendly argument with a couple of countrymen over the conscription problem in England, or something or other. At any rate, Mike was safe in jail and his wife Bridget was telling the neighbors all about it.

"And what be the charge agin him, Mrs. Mulcahy?" asked an inquisitive neighbor.

"Hivins, woman," replied Mrs. Mulcahy, "divil a charge is there agin him. They kape him free."—St. Louis Globe-Democrat.

The Japanese are quick at repartee; their wit is keen and tempered, and they can often administer a perfect snub in brief, terse form. In illustration of this there may be cited the following instance:

There was being tried in a court a case involving the possession and ownership of a piece of property. The litigants were brothers. The holder, who was clearly not the rightful owner, had assaulted and ejected his brother and was protesting his right to defend his claim.

The examining magistrate listened very patiently to him until he closed with the words, "Even a cur may bark at his own gate." Then the judge quaintly voiced the judgment, as if stating an abstract point of law—"A dog that has no gate bites at his own risk."—Washington Star.

## WEEKLY DIGEST

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1. **Accord and Satisfaction**—Defined.—An "accord and satisfaction" is an executed agreement whereby one party undertakes to give, and the other to accept in satisfaction of a claim, something other than that which he considers himself entitled to.—Continental Gin Co. v. Arnold, Okl., 153 Pac. 160.

2. **Adverse Possession**—Color of Title.—Where one seeking to establish title by adverse possession shows possession under color of title of a portion of the tract, his possession extends constructively to the whole tract.—Jones v. Coal Creek Mining & Mfg Co., Tenn., 180 S. W. 179.

3.——Prescription.—Where a municipality, for the prescriptive period, held possession of realty through tenants using same as a shoe factory, the ultra vires character of the city's use did not effect the acquisition of the title by it.—Beckett v. City of Petaluma, Cal., 153 Pac. 20.

4. **Acknowledgment**—Witnesses.—In suit to foreclose a mortgage, affirmative testimony of interested witnesses as to the falsity of the certificate of acknowledgement will be scrutinized carefully, but, when full and direct, is entitled to the weight given that of any other interested witness.—Sulzby v. Palmer, Ala., 70 So. 1.

5. **Aliens**—Presumption.—There is a presumption that a person of Mongolian race is an alien, which can be overthrown only by clear and convincing testimony as to his birthplace.—Ex parte Chin Him, U. S. D. C., 227 Fed. 131.

6. **Attachment**—Priority of Lien.—Where property is attached and thereafter sold by the defendant's transferee to a bona fide purchaser for value, the attachment lien is superior to the rights of such purchaser.—Jacques v. Manchester Coal & Ice Co., N. H., 95 Atl. 952.

7. **Attorney and Client**—Divorce.—A refusal to dismiss application for attorney's fees, where it appeared that while the question of such fees was being held in abeyance, the husband and wife, parties to the suit, had become reconciled and renewed their cohabitation, held error.—Overstreet v. Overstreet, Ga., 87 S. E. 27.

8.——Misconduct.—Attorney who, employed to collect claims and having done so, repeatedly told clients that the claims had not been paid, in one case persisting in the denial for three months, was guilty of misconduct calling for his disbarment.—In re Aldrich, Vt., 95 Atl. 927.

9. **Bailment**—Return of Property.—Defendant, who rented paving machinery, agreeing to return it in as good condition as when received, held liable for the reasonable cost of repairing tar kettles returned by him in a damaged condition without excuse.—Ford Paving Co. v. Elzy, Iowa, 155 N. W. 161.

10. **Bankruptcy**—Appeal and Error.—Where the allowed claim against bankrupt is for $2,500, with specific liens as security, appeal lies to the Circuit Court of Appeals, though no one of the liens amounts to $500, and the contest is only as to them.—Stuart v. Britton Lumber Co., U. S. C. C. A., 227 Fed. 49.

11.——Attachment.—Filing of petition in bankruptcy by attachment creditor and delivery of attached goods to receiver in bankruptcy held to discharge the attachment obtained within four months and pass title to the receiver.—Ernest Wolff Mfg. Co. v. Battreal Shoe Co., Mo. App., 180 S. W. 396.

12.——Chattel Mortgage.—Under the law of Georgia, which does not require a chattel mortgage to be recorded to be valid against general creditors, failure to record until within four months of bankruptcy does not render the mortgage preferential.—In re Roberts, U. S. D. C., 227 Fed. 177.

13.——Conditional Sale.—Seller of property to a bankrupt under an unrecorded conditional sale contract held entitled to reclaim the same from the trustee.—In re I. S. Remsen Mfg. Co., U. S. D. C. 227 Fed. 207.

14.——Discharge.—Discharge of bankrupt, being only personal as to him, does not affect subsisting liens.—Frey v. McGraw, Ind., 95 Atl. 960.

15.——Intervention.—Intervening trustee in bankruptcy held not entitled to the fund garnisheed, where it appeared that the fund was obtained from the assets of the partnership, which had not been adjudicated a bankrupt, and not from the assets of the bankrupt partner.—Foot, Schulze & Co. v. Porter, Minn., 154 N. W. 1078.

16.——Lien.—Lien of corporate deed of trust upon payment by purchaser from the corporation held not released or discharged, notwithstanding trustee's consent to order of bankruptcy court for surrender of purchaser's rights under the contract of purchase.—Union Trust Co. v. Beach, U. S. C. C. A., 227 Fed. 36.

17.——Parties.—A trustee in bankruptcy, suing for money paid by bankrupt without consideration to a corporation, should as a protection, in case of the corporation becoming insolvent, join as defendants all those shown by the complaint to be personally liable.—Billings v. Charles Miller & Son Co., U. S. D. C., 227 Fed. 185.

18.——Preference.—Elements of voidable preference under bankruptcy acts held debtor's insolvency, transfer within four months, securing of greater percentage of debt than other

creditors, and knowledge or cause for belief that prefence is intended.—Ernest Wolff Mfg. Co. v. Battreal Shoe Co., Mo. App., 180 S. W. 396.

19.——Surrender of Lease.—Trustee in bankruptcy, surrendering lease held as asset for several months, does not lose right to collect rent for interval on doctrine of relation.—Citizens' Savings & Trust Co. v. Rogers, Wis., 155 N. W. 155.

20. **Banks and Banking**—Forgery.—Where a check sent by mail is intercepted by a third person and cashed by an intermediary bank with a forged indorsement thereon, the payee may ratify the delivery to the third person, but not the forgery, and may sue such bank in trover for conversion of the check.—Crisp v. State Bank of Rolla, N. D., 155 N. W. 78.

21. **Bills and Notes**—Accommodation Indorser.—Where accommodation indorsers indorse under an agreement to be equally liable, they are treated, on the maker's default, as his sureties in the adjustment of ultimate rights and liabilities among themselves.—Plumley v. First Nat. Bank of Hinton, W. Va., 87 S. E. 94.

22.——Acknowledgment of Indebtedness.—Instrument acknowledging receipt of money, and stating that it was put at interest, and that the signer was to use the interest during her life, held, in effect, a promissory note.—Weber v. Jantzen, Mo. App., 180 S. W. 432.

23.——Holder for Value.—Where the buyer of land from a bank gave her note therefor, and the bank transferred to a third person, before maturity, payment of the note by the maker to the bank, which had not authority from its transferee to accept it, nor possession of the note, was no defense to the transferee's suit thereon.—Calhoun v. Sharkey, Ark., 180 S. W. 216.

24. **Boundaries**—Estoppel.—Where a neighbor, in the absence of the owner, causes the position of a fence to be changed, the fact that the owner does not seek to put the fence back, but merely disputes with the neighbor, does not estop him from thereafter demanding such restoration.—Russell v. Producers' Oil Co., La., 70 So. 92.

25. **Carriers of Goods**—Animals.—Railroad carrying shipment of mules, in failing to sand the floor of the car so that the animals fell, thus inciting their vicious propensities, causing damage, held liable therefor.—Blair Horse & Mule Co. v. St. Joseph & G. I. Ry. Co., Mo. App., 180 S. W. 412.

26.——Connecting Carrier.—Carmack Amendment to Interstate Commerce Act, though making initial carriers liable for negligence of connecting carriers, held not to prevent liability from attaching to other carriers.—T. W. Mewborn & Co. v. Louisville & N. R. R., N. C., 87 S. E. 37.

27.——Discrimination.—Refusal of a carrier to forward goods loaded on a spur track erected for the benefit of another concern held not a discrimination as against the shipper in favor of such other concern.—St. Louis Southwestern Ry. Co. v. Arkadelphia Milling Co., Ark., 180 S. W. 200.

28.——Initial Carrier.—Where a shipment of feed was refused by the consignee because of damage and further depreciated in value before being sold, the initial carrier was liable, not only for the original damage, but for damage from failure of its agent, the delivering carrier, to promptly sell the feed to best advantage.—Burkenroad Goldsmith Co. v. Illinois Cent. R. Co., La., 70 So. 44.

29.——Insurer.—Defendant railroad, carrying for passenger jewelry used by him in connection with his business of operating a shooting gallery at fairs and circuses, held not liable for loss of such jewelry as an insurer.—Strome v. Lusk, Mo. App., 180 S. W. 27.

30.——Negligence.—The measure of damages for negligent injury to live stock during transportation is the market value at place of delivery of those killed or rendered worthless, and the measure of damages for those injured, but not killed or rendered worthless, is the difference between the market value as delivered and what it would have been if properly handled.—Hovencamp v. Union Stockyards Co., Tex., 180 S. W. 225.

31.——Place of Contract.—In the absence of federal law on the subject, the law of the place in which the contract for the carriage of live stock is made and the shipment is commenced governs a carrier's power to limit its liability for injuries to a caretaker for the stock.—Wiley v. Grand Trunk Ry. of Canada, U. S. D. C., 227 Fed. 127.

32.——Waiver.—A carrier may, after loss or damage to a shipment, waive provisions of its contract limiting the time within which action may be brought therefor.—Naumen v. Great Northern Ry. Co., Minn., 154 N. W. 1076.

33. **Carriers of Passengers**—Nominal Damages.—Verdict for more than nominal damages for street car conductor's refusal to allow husband accompanied by his wife to ride, at the same time calling him a "Dago," held excessive.—Bartolini v. Grays Harbor Ry. & Light Co., Wash., 153 Pac. 4.

34.——Protection.—The duty of a railroad to protect its passengers against search and arrest at stations by a known officer does not require that the road or its agents offer resistance or inquire into the authority under which such known officer assumes to act.—Nashville, C. & St. L. Ry. v. Crosby, Ala., 70 So. 7.

35. **Charities**—Public Trust.—Trusts created by a will to a church synod as trustee for the construction and maintenance of churches, homes for the aged and orphans, missions, and support of students in colleges are public trusts, charitable in nature, and will be sustained if the testator's purpose can be ascertained by any reasonable means.—In re Evenson's Will, Wis., 155 N. W. 145.

36. **Commerce**—Common Law Right.—The federal Employers' Liability Act, providing for liability for injury to or death of employe engaged in interstate commerce, held not to take away a father's right, under the state or common law, to recover for the loss of services of his minor child, resulting from injury.—Nelson v. Illinois Cent. R. Co., Iowa, 155 N. W. 169.

37.——Discrimination.—Although the Interstate Commerce Commission ruled track charges for delay in unloading during inclement weather to be unjust discrimination, that ruling is not conclusive upon intrastate shipments, where it does not appear that there was actual discrimination in the charges exacted.—Murphy v. New York Cent. R. Co., N. Y. Sup., 156 N. Y. S. 49.

38.——Employe.—Where decedent brakeman was running cars of coal, part of which would be used in interstate and part in intrastate commerce, into storage bins, he was not employed in interstate commerce, under Act Cong. April 22, 1908.—Harrington v. Chicago, B. & Q. R. Co., Mo. App., 180 S. W. 443.

39.——Employe.—Railroad employe, struck and killed as the result of the negligence of his fellow servants, by barrel of paint, while directing its removal from car in yard, held not "engaged in interstate commerce" within the federal Employers' Liability Act, so that his widow could not recover.—Salmon v. Southern Ry. Co., Tenn., 180 S. W. 165.

40.——Employe.—Moving engine used in interstate commerce, preparatory to attaching it to cars is an act in interstate commerce, so that negligence of fellow servants in so moving the engine would entitle the injured servant to recover under the federal Employers' Liability Law.—Byram v. Illinois Cent. R. Co., Iowa, 154 N. W. 1006.

41.——Theatrical Contract.—Where vaudeville performers were booked under contracts requiring them to go from state to state, business of theater owners and their booking agents held in part interstate commerce.—H. B. Marinelli, Limited, v. United Booking Offices of America, U. S. D. C., 227 Fed. 165.

42. **Constitutional Law**—Prior Contracts.—An act of Congress may invalidate contracts or rights which had their inception before its passage.—Elliott Mach. Co. v. Center, U. S. D. C., 227 Fed. 124.

43.——Public Utilities.—An order of the public utilities commission requiring a railroad company to continue an interurban service, held not a denial of the equal protection of the laws.—Hocking Valley Ry. Co. v. Public Utilities Commission, Ohio, 110 N. E. 521.

44. **Contracts**—Offer and Acceptance.—A proposal to accept an offer if modified, or an acceptance subject to other terms and conditions than those contained in the offer, is equivalent to an absolute rejection of the offer.—Poel v. Brunswick-Balke-Collender Co. of New York, N. Y., 110 N. E. 619.

45. **Corporations** — Agency. — The general manager of a corporation, actively and ostensibly at the head of its business, the principal line of which was wholesale groceries and advancing to farmers, could bind it by a purchase of fertilizers; this being germane to its general business.—Dadeville Union Warehouse & Grocery Co. v. Jefferson Fertilizer Co., Ala., 69 So. 918.

46.——Foreign Corporation.—The transactions of a corporation of a foreign state doing business in this state are dependent upon the statute law of this state, and generally, in the absence of a statutory rule, upon the rule of comity, which should be extended, not narrowed.—Martyne v. American Union Fire Ins. Co. of Philadelphia, N. Y., 110 N. E. 502, 216 N. Y. 183.

47.——Foreign Corporation.—The tests whether a foreign corporation is "doing business" in the state are whether it has an agent or offices for conduct of business or conducts its affairs in the state or has capital invested.—Commonwealth v. Wilkes-Barre & H. R. Co., Pa., 95 Atl. 915.

48. **Damages**—Demurrer.—In a personal injury action, a paragraph of the petition, averring plaintiff's expenses for medical attention were "$———," is subject to special demurrer.—Griffin v. Russell, Ga., 87 S. E. 10.

49. **Death**—Conscious Suffering.—A complaint alleging that plaintiff's intestate died a "few" minutes after he was exposed to the burning held to state a cause of action for conscious suffering before death.—Klann v. Minn., Wis., 154 N. W. 996.

50.——Eyewitness.—Where there is no living witness who saw or knew what the deceased did or omitted to do by way of care in entering upon a railroad crossing, the law presumes that he exercised reasonable care for his own safety.—Johnston v. Delano, Iowa, 154 N. W. 1013.

51. **Deeds**—Delivery.—"Delivery" ordinarily implies acceptance, but a mere transfer of manual possession of a deed for examination is no more than a tender.—Capps v. Edwards, Tex. Civ. App., 180 S. W. 137.

52. **Divorce**—Decree.—Although a decree in divorce dividing lands does not specifically state that the wife shall take the property subject to the mortgage, where that is the only way in which she can take, the decree will be so construed and so upheld.—Crosser v. Crosser, Ark., 180 S. W. 337.

53. **Easements**—By Way of Necessity.—An easement by way of necessity is not limited in its use to the original use of the lands, but varies to meet changed conditions.—Erie R. Co. v. S. H. Kleinman Realty Co., Ohio, 110 N. E. 527.

54. **Electricity**—Contributory Negligence.—Electric light company held not liable for death by electric shock of boy who reached up to jerk a wire to brighten an arc light, which wire was fastened back out of reach of a person of average height.—Lapouyade v. New Orleans Ry. & Light Co., La., 70 So. 110.

55. **Execution**—Intervention.—It will not be presumed that time within which an execution could properly issue has expired, and where sheriff levying execution upon interest due payee of notes intervened in suit by indorsee, it would be presumed that execution was against the property of payee.—Cole v. Schamber, S. D., 155 N. W. 189.

56. **Fixtures**—Removal.—Though a mortgagee has only a lien, a mortgager is not entitled to remove a building, built after execution of the mortgage, where there was no understanding to that effect, though it might be severed without injury to the realty.—Cutler v. Keller, Wash., 153 Pac. 15.

57. **Food**—Misbranding.—Under Pure Food Act, prohibiting the misbranding of food packages, the placing in a food package of advertising matter, consisting of a coupon exchangeable for other goods, is not a misbranding; such coupon having no appreciable weight, and not being deleterious.—Ex parte De Klotz, Neb., 155 N. W. 240.

58. **Fraud**—False Representation.—It is not essential to a right of action for deceit that the false representations shall have been an inducement to a contract, but is sufficient that plaintiff shall have been induced by such representations to his injury to part with property, or surrender some legal right.—Guild v. More, N. D., 155 N. W. 44.

59. **Frauds, Statute of**—Estoppel.—Where a father orally agreed with his children on the division of his lands, and conveyed their shares to all except plaintiff, one who received her share cannot invoke the statute of frauds to prevent plaintiff from getting her share after the father's death.—Simmons v. Ross, Ill., 110 N. E. 507.

60.——Possession of Land.—Under an oral contract to sell an interest in land to a son-in-law, proof of his possession under such contract was not enough, of itself, to avoid the statute of frauds as between relatives.—Goff v. Kelsey, Or., 153 Pac. 103.

61. **Garnishment**—Jurisdiction.—A debt due to a nonresident by a nonresident corporation upon an obligation not made or to be performed in the state is not within the state courts' jurisdiction, and, without personal service on debtor, cannot be subjected to plaintiff's debt by judgment against the garnishee.—Louisville & N. R. Co. v. McCarty, Ala., 70 So. 91.

62. **Gifts**—Consummation.—A purpose to make a gift of property can only be consummated by the donor actually parting with possession of and dominion over the subject by an absolute delivery thereof to the donee, or to some one for the donee, and an acceptance by the donee.—Pirie v. Le Saulnier, Wis., 154 N. W. 993.

63. **Good Will**—Breach.—Agreement of seller of lumber business not to engage in or become interested in the sale of lumber in the town was broken by such seller's holding himself out as being ready to sell lumber, whether or not he made sales every day.—Kimbro v. Wells, Ark., 180 S. W. 342.

64. **Homicide** — Manslaughter. — Where defendant killed while attempting to hold up a saloon in concert with another, the law of manslaughter had no application, and he was guilty, if at all, of murder in the first or second degree.—Cook v. People, Colo., 153 Pac. 214.

65. **Husband and Wife**—Injury to Wife.—The marriage of a woman held not to affect her right to recover for loss of time and capacity to earn money, due to injuries inflicted before her marriage.—Booth v. Baltimore & O. R. Co., W. Va., 87 S. E. 84.

66. **Injunction**—Preliminary.—Where, in an application for a preliminary writ of injunction, shooting at targets is shown to endanger those traveling a public highway, the shooting may be enjoined even before the hearing on the merits.—Wolcott v. Doremus, Del. Ch., 95 Atl. 904.

67. **Jury**—Disqualification.—Where a juror had neither seen the crime committed, heard any evidence on oath, nor had any prejudice against accused or fixed opinion as to his guilt which would not yield to the evidence and instructions, it was no abuse of discretion to hold the juror competent though he said he "had a little opinion" about the case.—Thomas v. State, Ga., 87 S. E. 8.

68. **Landlord and Tenant**—Crops.—Where one leases land to another for the purpose of raising a single crop, the parties to the contract each taking a share thereof, they were joint owners of the crop.—Wheeler v. Sanitary Dist. of Chicago, Ill., 110 N. E. 605.

69.——Injury to Tenant.—Whether the tenant or a member of his family be injured from defective condition of the premises, the landlord's liability is practically the same.—Pinkerton v. Slocumb, Md., 95 Atl. 965.

70.——Priority of Lien.—Seller's right to rescind for buyer's concealment of financial condition held superior to landlord's lien for rent. —Parker-Blake Co. v. Ladd, Ala. App., 70 So. 188.

71. **Libel and Slander**—Evidence.—In an action for slander uttered by the agents of an insurance company after beneficiary had recovered on a policy, evidence that recovery had been contested on the ground that the policy was obtained by fraudulent representations, is admissible in mitigation of damages.—National Life & Accident Ins. Co. v. De Vance, Miss., 70 So. 83.

72. **Licenses**—Business Subject To.—A person hatching eggs by an incubator for various persons held not liable for a license tax under a town charter authorizing a license tax on agents and agencies in said town.—Bacon v. Cannady, Ga., 86 S. E. 1083.

73. **Limitation of Actions**—Amending Action. —In action for death of locomotive engineer under federal statute covering employes in interstate commerce, amendment more than two years after the accident of petition originally drawn to give an action either under state law or federal statute to supply the necessary allegation that decedent left dependents was not barred by two-year statute of limitations.— Basham v. Chicago & G. W. Ry. Co., Iowa, 154 N. W. 1019.

74.——Implied Contract.—Where plaintiff gave his own personal negotiable note in settlement of decedent's debt, there was an immediate payment of the debt, so that an action for reimbursement, which would be one on an implied contract and not on a written obligation, accrued when the note was given, and the two-year statute applied.—Yndo v. Rivas, Tex., 180 S. W. 96.

75. **Malicious Prosecution**—Probable Cause.— Whether actions claimed to have been brought without probable cause were so brought should be determined, in an action for malicious prosecution of same, with reference to the issues tendered in such actions, and not on issues which might have been tendered, but were not. —Petruschke v. Kamerer, Md., 155 N. W. 205.

76. **Master and Servant**—Assumption of Risk. —Where an employe was killed by falling from a scaffold of the safety of which he had complained, recovery was not defeated on the ground of assumption of risk, where the employer's foreman had assured decedent of the safety of the scaffold.—Concannon v. J. L. Strassel Paint & Roofing Co., Ky., 180 S. W. 86.

77.——Res Ipsa Loquitur.—Where a locomotive engineer was killed by his engine being derailed by his employing railroad's open switch, the case came within the rule of res ipsa loquitur, as establishing a prima facie case of negligence.—Basham v. Chicago & G. W. Ry. Co., Iowa, 154 N. W. 1019.

78.——Safety Appliance.—Under the federal Employers' Liability Act a railroad company is liable to an employe engaged in interstate commerce for any injuries resulting from allowing a car to be moved which was not equipped with an automatic coupler as required by the Safety Appliance Act.—Fletcher v. South Dakota Cent. Ry. Co., S. D., 155 N. W. 3.

79. **Mines and Minerals**—Deed.—Where a deed conveying oil and gas provided that the grantee should pay a consideration, in addition to that stated in the deed, within 90 days after a well is drilled producing oil in paying quantities, there is no obligation on production of gas alone.—Ball v. Freeman, W. Va., 87 S. E. 91.

80. **Monopolies**—Choice of Customer.—That defendant sold only to wholesalers, and declined to sell to a retailer to whom it sold for a time, held not unlawful, under the Sherman Act or the Clayton Act.—Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co., U. S. C. C. A., 227 Fed. 46.

81.——Restraint of Trade.—Whether combination restrains interstate commerce held dependent upon whether effect upon interstate movement of goods or persons is within consequences reasonably to be expected, but results comparatively insignificant will be disregarded. —H. B. Marienelli, Limited, v. United Booking Offices of America, U. S. D. C., 227 Fed. 165.

82. **Municipal Corporations** — Injunction. — Any taxpayer, whether using light and power from the city's plant, where there was no legislation restricting the right of interference to some officer, could restrain the unlawful expenditure of public money by city officers in laying a steam main to utilize waste steam in heating.—Milligan v. Miles City, Mont., 153 Pac. 276.

83. **New Trial**—Newly Discovered Evidence. —In action against street railroad, new trial will not be granted for newly discovered evidence of defendant's own employe that plaintiff said the motorman was not to blame, not ascertained until after trial over two years after the accident.—Kentucky Traction & Terminal Co. v. Waits, Ky., 180 S. W. 356.

84. **Nuisance**—Injunction.—When a business lawful in itself becomes obnoxious to neighboring dwellings, rendering their enjoyment uncomfortable by smoke, noise, offensive odors, or otherwise, it is a nuisance which equity will restrain.—City of San Antonio v. Hamilton, Tex. Civ. App., 180 S. W. 160.

85. **Officers**—Waiver.—An officer cannot be compelled to take less than the salary fixed by law, and does not waive his rights by accepting appointment at a less salary, and discharging the duties of the office.—Pitt v. Board of Education of City of New York, N. Y., 110 N. E. 612.

86. **Parent and Child**—Agency.—A parent who kept an automobile for the comfort and pleasure of her family, including a minor son, is liable for the negligence of the son in driving the machine with her consent.—Griffin v. Russell, Ga., 87 S. E. 10.

87.——Necessaries for Child.—Where parents neglect to provide a minor child with necessaries they are liable to a third person who provides same, though without their consent.— Lufkin v. Harvey, Minn., 154 N. W. 1097.

88. **Patents**—Patentability.—A combination of old elements, which coact to produce a more beneficial result, may constitute patentable invention.—Consolidated Contract Co. v. Hassam Paving Co., U. S. C. C. A., 227 Fed. 436.

89.——Patentability.—The slightest changes which effect a new improvement may be patentable; the test is whether the invention is patentable when considered, not with reference to any one thing in particular, but to everything in general.—Salt's Textile Mfg. Co. v. Tingue Mfg. Co., U. S. D. C., 227 Fed. 115.

90. **Principal and Surety**—Liability of Surety. —Where a third person takes over a construction contract, the contractor's surety is not liable for work done by such third person.— Northern Minnesota Drainage Co. v. Mageau, Minn., 154 N. W. 1092.

91. **Railroads** — Constitutionality. — Statute imposing liability on railroad companies for firing personal property by locomotives, held not unconstitutional for imposing attorney's fees on defendant.—St. Louis, I. M. & S. Ry. Co. v. Cooper & Ross, Ark., 180 S. W. 203.

92.——Contributory Negligence.—The action of plaintiff's intestate in walking on the track when a strong wind was blowing and snow and dirt filled the air held contributory negligence, barring recovery.—Hanks v. Great Northern Ry. Co., Minn., 154 N. W. 1088.

93.——Crossing.—A train which has been stopped on a street crossing should not be started without ample warning having been given, and it having been determined whether travelers on or near the street may be in danger.—Severtson v. Northern Pac. Ry. Co., N. D. 155 N. W. 11.

94.——Obstruction of Street.—That a train obstructing a street has been moved at frequent intervals is a sufficient warning to a pedestrian not to attempt to cross between the cars when it stops.—Reno v. Yazoo & M. V. R. Co., La., 70 So. 43.

95.——Presumption.—Motorman driving interurban car toward street crossing and seeing an automobile approach had a right to expect that the driver would continue across the track, which, at the speed of the vehicles, would take him out of danger, or stop before reaching the track.—England v. Southwest Missouri R. Co., Mo. App., 180 S. W. 32.

96.——Trespasser.—Where a baggageman noticed the presence of a trespasser near the tracks, the railroad company is liable for injuries to him cause by a block of ice thrown from the car by the baggageman.—Louisville & N. R. Co. v. Petrey, Ky., 180 S. W. 370.

97. **Sales**—Burden of Proof.—Where it appeared from the buyer's evidence that causes other than the defective machine complained of and covered by warranty delayed the operation of the factory, the burden was on the buyer to show what part of the delay was caused by the defect and what damages were sustained from the delay so caused.—Lewistown Foundry & Machine Co. v. Hartford Stone Co., Ohio, 110 N. E. 515.

98.——Implied Warranty.—Statements by seller of vinegar that it would conform to state and national pure food laws, held a warranty of its quality, requiring instructions thereon.—American Fruit Product Co. v. Davenport Vinegar & Pickling Works, Iowa, 154 N. W. 1031.

99. **Set-Off and Counterclaim**—Pleading and Practice.—Damages through a wrongful attachment of defendant's automobile in plaintiff's action on open accounts, could not be pleaded by defendant in the action as a counterclaim; a wrongful attachment being a tort.—Hoeven v. Morley, S. D., 155 N. W. 191.

100. **Statutes**—Uniformity in Operation.—A statute is general and uniform, where it operates equally on every person and locality within the circumstances covered by the statute and its classification has a reasonable basis, though in practice it may result in some inequality.—Steele, Hopkins & Meredith Co. v. Miller, Ohio, 110 N. E. 648.

101. **Street Railroads**—Last Clear Chance.—Last chance doctrine held inapplicable, where person walking parallel with street car track, turned toward it almost simultaneously with the car reaching him and was struck.—Emery v. Waterville, F. & O Ry. Co., Me., 95 Atl. 892.

102. **Telegraphs and Telephones**—Liability.—Defendant telegraph company held not liable for failure to deliver wire from plaintiff, sick and about to return home, to son, that he was coming on a certain train, where plaintiff was aided to alight from the train he actually came on, and driven promptly home, though his son failed to meet him.—Western Union Tel. Co. v. Kyle, Ark., 180 S. W. 208.

103. **Trade-Marks and Trade-Names**—Expiration of Patent.—Rule that public may use generic name of patented article after the expiration of the patent held not to apply to tradename of unpatented element of patented combination having no generic name.—Buffalo Specialty Co. v. Van Cleef, U. S. C. C. A., 227 Fed. 391.

104.——Unfair Competition.—Where one person has manufactured an article, and his name has become valuable as descriptive thereof, another of the same name, though entitled to manufacture the article, cannot use his name in such a way as to mislead the public.—J. I. Case Plow Works v. J. I. Case Threshing Mach. Co., Wis., 155 N. W. 128.

105. **Trespass to Try Title**—Misnomer.—A correction of a misnomer of parties in a deed, in an action of trespass to try title against a mere wrongdoer, is not necessary, but plaintiff can recover on his equitable title.—Troy & North Carolina Gold Mining Co. v. Snow Lumber Co., N. C., 87 S. E. 40.

106. **Trusts**—Beneficiary.—A beneficial estate follows the consideration, and attaches to the party from whom the consideration comes, so that plaintiff, who furnished consideration for her husband's purchase of property, is the real owner of the property.—Barnes v. Spencer, Or., 153 Pac. 47.

107.——Following Proceeds.—Where a corporation transferred its property to its sole stockholder, the transaction being a distribution of capital stock, a judgment creditor could follow the proceeds of the sale of the property by the stockholder into the hands of the stockholder's agent, though no attachment had been made.—Jacques v. Manchester Coal & Ice Co., N. H., 95 Atl. 952.

108.——Lawful Purpose.—All that is required of a valid trust in personal property is a lawful purpose and sufficient definiteness and certainty that the court may enforce it.—In re Evenson's Will, Wis., 155 N. W. 145.

109. **Vendor and Purchaser**—Definition of Words.—The word "at," as used in a land sale contract entitling the vendee to relinquish the land at the end of one year and receive back the purchase money, with interest, held to mean "after."—Davis v. Godart, Minn., 154 N. W. 1091.

110.——Marketable Title.—Where one deed in the chain of title was to "Krups," and the next deed was by "Krepps," and the only attempt to cure such defect was by affidavit, held, that the title was not marketable.—Harris v. Van Vranken, N. D., 155 N. W. 65.

111.——Misrepresentation.—Where the buyer of farm lands represented he was an experienced farmer, owned a farm in another state, and knew good land when he saw it, the contract could not be rescinded for misstatements of the sellers as to the quality of the soil.—Hegdale v. Wade, Or., 153 Pac. 107.

112. **Waters and Water Courses**—Riparian Rights.—A riparian owner on the old bed of a stream held entitled, where he had not been guilty of laches, to a mandatory injunction requiring that a stream diverted by defendant be restored to its proper course.—Aubol v. Grand Forks Lumber Co., Minn., 154 N. W. 968.

113. **Wills**—Attestation.—Will of blind testator, signed by witnesses but four feet from him, he having the opportunity to hear they were signing the paper he had signed, held not invalid, as having been signed by the witnesses out of his presence.—In re Allred's Will, N. C., 86 S. E. 1047.

114.——Estoppel.—One who accepts benefits under a will with knowledge of the contents thereof may not thereafter impeach its validity.—Poplin v. Hatley, N. C., 86 S. E. 1028.

115.——Heirs Defined.—Under a will whereby property was given to sisters of the testator, or, if dead, to their heirs, held, that the word "heirs" meant those who were heirs of the sisters at the time the gift came into effect, after the death of the second life tenant.—Branch v. De Wolf, R. I., 95 Atl. 857.

116.——Separableness.—The legal parts of a will may be upheld, if separable from the illegal, without changing the general scheme of the testator; but if a different devise from that intended will result, the whole must fail.—Reeder v. Antrim, Ind., 110 N. E. 568.

117.——Undue Influence.—If any presumption of undue influence arose from the fact that a legatee, a blind testator's son, stayed with him managing his property, it was of fact only, and not decisive of the issue.—In re Allred's Will, N. C., 86 S. E. 1047.

118.——Vested Remainder.—Where deceased made a devise to his wife for life and then to remaindermen or their survivors, held that the estate of the remaindermen did not vest until the death of the wife, and only those then living were entitled to share.—Perry v. Thomas, R. I., 95 Atl. 776.

119. **Witnesses** — Cross-Examination. — The rule requiring cross-examination to be confined to the subjects of the direct examination does not limit the cross-examination to the specific details inquired of in chief.—Commercial State Bank v. Moore, U. S. C. C. A., 227 Fed. 19.

120.——Husband and Wife.—To show the state of mind of plaintiff's wife concerning her affections, said to have been alienated by defendant, her private communications to plaintiff may be shown, provided they do not include statements of what defendant did or said.—McGinnis v. McGlothlan, Mo. App., 180 S. W. 405.